HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
SWP No. 1520/2004 and CMP No. 1554/2004

HON'BLE JUSTICE J. P. SINGH

Parvinder Kumar Lehria ***v.*** ***Jammu and Kashmir State Board of School Education and ors***

Date of Decision: **10.04.2007**

Coram:

Appearing Counsel:

For the Petitioner : Mr. Tashi Rabstan, Advocate

For respondents : Mr. D. S. Thakur, Advocate for respondent No. 1.
Mr. Vinod Kotwal, Advocate for respondents 4, 6 and 7.
Mr. K. J. Singh, Advocate for respondent No. 9.
Mr. H. A. Siddiqui, Advocate for respondent No. 10.

JUDGEMENT

Inviting applications from the permanent residents of Jammu and Kashmir, Jammu and Kashmir State Board of School Education (hereinafter to be referred as 'Board of School Education') published its notice No. F (Admn-B)CU/04 dated 17.02.2004 prescribing B. A/ B. Sc./B.Com as eligibility for engagement of persons to do Desk Job for a transitory period of 60 days only. The Notification indicated existence of four positions for persons amongst those who were registered at Board Office Srinagar and Jammu each and two positions for each remaining Districts of Jammu/Srinagar preferably hailing from the same District.

Parvinder Kumar Lehria-writ petitioner, holding a degree of Education, one year Diploma, in Computer Education and Short Hand (Stenography), four years experience in official work And a reserved category certificate of belonging to a Scheduled Caste applied for his engagement for one of the positions of the Desk Job.

The Board of School Education issued its Order No. 483-B of 2004 dated 23rd of June, 2004 appointing seven persons for the Desk Job for a period of 60 days on a consolidated salary of Rs. 1900/- per month providing that the initial engagement shall be extended from time to time depending on the need and satisfactory accomplishment of the Job.

Aggrieved by the selection and engagement of respondent Nos. 4 to 10 for the Desk Job, the petitioner questions the Board of School Education's order of 23rd June, 2004 seeking a direction to the Board of School Education for his engagement for the Job.

Challenging the selection and engagement of respondent Nos. 4 to 10 as illegal, arbitrary and improper, the petitioner attributes all this to the Chairman of the Board of School Education saying that he had hardly six days to proceed on superannuation when he managed the arbitrary selection and engagement of the private respondents by sheer favourtism and influence.

The private respondents justified their selection and engagement on the basis of higher merit and superior claim besides saying that the petitioner belonged to Jammu District and had thus no claim over the positions which were to be filled up from the candidates belonging to Districts other than Jammu District. The

Board of School Education is, however, silent regarding the allegation of the petitioner that the Chairman had approved the selection at the verge of his retirement.

During the course of hearing of this petition, it was pointed out by the petitioner that having been engaged for a period of 60 days, the official respondents had been continuing the engagement of private respondents thereby violating the spirit of the Notification and Guidelines in force for engagement of persons against casual/temporary vacancies/positions in the Board of School Education.

Learned counsel appearing for the Board of School Education did not have any answer to support the continuance of private respondent Nos. 4 to 10 beyond the period of 60 days because the records of the Board of School Education, did not contain any material to support such continuance.

I have heard learned counsel for the parties and gone through the selection record of the Board of School Education which was made available at the time of hearing of this petition.

Perusal of the selection record of the Board of School Education indicates that interview for engagement of persons for Desk and Menial Jobs had been conducted by a Committee constituted of M/s. H. K. Gupta, Joint Secretary Administration, I. K. Kotwal, Accounts Officer and Chand Rani, Joint Secretary Administration, on 26th/28th of February, 2004 when out of 103 candidates applying for the Desk Job and 300 candidates applying for the Menial Jobs, only 87 had appeared for the Desk Job and 230 for the Menial Jobs. The

selection records contain a copy of order No. 483-B of 2004 dated 23rd of June, 2004, a note sheet shown to have been signed on 10th of June, 2004 and an unsigned list of candidates who had applied for the Desk/Menial Jobs in the Board of School Education with some notings on this list of 24th of February, 2004.

There is nothing in the records to indicate as to how the Committee had assessed the merit of the candidates who had appeared before the Committee on 26th and 28th of February, 2004. The Board of School Education does not appear to have prepared any criteria for selection of candidates for the Desk and Menial Jobs. It is not discernable from the records as to how the selection Committee would recollect the individual rating of the candidates who had appeared in the interview on 26th and 28th of February, 2004 on 10th of June, 2004 i.e. after a period of more than three months when they had prepared a note for its onward transmission to the retiring Chairman of the Board of School Education.

The records of the Board of School Education depict a dismal picture indicating an unfair approach of the Board and its selection committee in playing with the aspirations of those who had competed for the Desk Job and Menial Jobs pursuant to issuance of Notification dated 17.2.2004. The records of the Board of School Education further demonstrate that the Board had exceeded the quota of posts which were required to be filled up from the candidates belonging to Jammu District. Only one candidate Ms. Shamma Bhat, respondent No. 10, a resident of Poonch had been selected whereas the candidates who had appeared from other Districts had been ignored consideration

for selection. I am thus constrained to hold that the selection of private respondent Nos. 4 to 10 was unjustified for there is no records to indicate their having been adjudged better in merit to the others who had competed in the interview. Approval accorded by respondent No. 3, the then Chairman of the Board of School Education, who was at the verge of retirement too demonstrates that the selection had been unfair.

Unfairness in any form whatsoever breads discontent, spreading outrageous and, at times, rebellious ripples thereby polluting individual minds and ultimately affecting the society adversely. Administrative Heads and Selection Authorities owe a duty to the public to act fairly. Their actions are thus required to be transparent, fair and objective. Decisions taken by the authorities at the verge of their retirement, are seen with suspicion by the public. The authorities are, therefore, required to act in such a manner that the confidence of public is not shaken in the Institutions which have to decide about the recruitment of millions of unemployed youth in the Country.

Yet another thing which come up for discussion at the time of hearing of this petition was that the respondent- Board of School of Education had been continuing the engagements meant only for a transitory period of 60 days and it was admitted by the learned counsel for the parties that the engagement of the private respondents was still continuing.

This appears to be a device employed by the Board of School Education to continue casual/temporary, engagements thereby sacrificing the Rules, Guidelines and Instructions governing

engagement of permanent, temporary or casual employees. Casual, ad hoc or temporary engagements cannot be a substitute for regular employment de hors the Rules in force governing such recruitment and appointments. Casual, ad hoc or temporary engagements are permissible only for a short period. These engagements, cannot be continued beyond the prescribed period lest these engagements may deprive all those who may be entitled to seek permanent employment to these positions in accordance with the Rules. Engagement of private respondents beyond a period of 60 days too is this unjustified. Appointment order of the private respondents incorporating a clause that their engagements would be extendable on the basis of their satisfactory performance, was contrary to what was contained in the Notification of the Board of School Education. This clause in the impugned Notification is, therefore, un-warranted.

For all what has been said above, while holding the selection of private respondents for their engagements for Desk Job and their appointments as such, extendable on the basis of their satisfactory performance of duties, to be unjustified and un-warranted. I, would, direct the Jammu and Kashmir State Board of School Education to discontinue the engagement of private respondent Nos. 4 to 10 within a period of one month and to hold fresh selection for engagement of persons for the Desk Job during this period ensuring fair and transparent selection on the basis of merit and suitability in accordance with the Rules, Regulations or Instructions governing such engagements. Petitioner shall also be entitled to consideration in the fresh selection for such engagement and if found fit and suitable,

the Competent authority shall consider relaxing his age if he was found to be overaged at the time of selection and appointment.

The writ petition is disposed of accordingly.